

Decision \_\_\_\_\_

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of Application of Southern California Gas Company for Authority to Offer a New Service At Tariffed Rates, Terms, and Conditions Allowing Carriers to Place Fiber Optic Cable in Gas Pipelines.

(U 904 G)

Application 02-03-061  
(Filed March 29, 2002)

In the Matter of Application of San Diego Gas & Electric Company for Authority to Offer a New Service At Tariffed Rates, Terms, and Conditions Allowing Carriers to Place Fiber Optic Cable in Gas Pipelines.

(U 902 G)

Application 02-03-062  
(Filed March 29, 2002)

**OPINION ON REQUEST FOR INTERVENOR COMPENSATION**

This decision grants \$7,754.21 to The Utility Reform Network (TURN) in compensation for substantial contributions to Decision (D.) 03-10-017.

**1. Background**

D.03-10-017 granted the requests of Southern California Gas Company (SoCalGas) and San Diego Gas & Electric Company (SDG&E) for authority to implement a new service allowing telecommunications carriers and cable TV companies to place fiber optic cable in the utilities' active gas pipelines at tariffed rates, terms and conditions.

On July 13, 2001, SoCalGas filed Advice Letter (AL) 3040 requesting Commission authorization to implement the new service. On January 9, 2002, the Commission issued Resolution G-3320, which denied AL 3040 without prejudice, and stated that if SoCalGas desired to offer the proposed service, it must file an application with the Commission to do so. On March 29, 2002, SoCalGas filed Application (A.) 02-03-061 as required by Resolution G-3320. At the same time, SDG&E filed A.02-03-062 requesting approval of the same service on its system under essentially the same terms and conditions as proposed by SoCalGas in A.02-03-061.

In its protest to the applications, TURN raised the issue of system capacity, stating that the Commission should be able to quantify potential impacts of fiber optic conduit on pipeline capacities and that SoCalGas needs to clarify the pipeline eligibility for installation. Regarding load growth and system planning, TURN noted SoCalGas' proposal to install cable unless the utility determines that their load growth forecast within a one-year time frame would create insufficient pipeline capacity to accommodate the cable. TURN stated that planning for capacity additions normally occurs on a five year planning horizon and that a one-year horizon may be too short to adequately anticipate system constraints. TURN also expressed concerns regarding the ratemaking aspect where the costs would be included in SoCalGas' 2004 general rate case (GRC), but developing a forecast of revenues will be problematic and speculative. TURN also noted the potential problem of affiliate abuse.

By an Administrative Law Judge (ALJ) ruling dated June 19, 2002, the applications were consolidated. On July 10, 2002, a prehearing conference (PHC) was held in San Francisco. A schedule for settlement discussions and the filing of a settlement document was set.

On August 23, 2002, SoCalGas and SDG&E sent a letter to the assigned ALJ documenting several changes to their testimony and proposed tariff language. The revised testimony and revised proposed tariffs were also served on all parties in the proceeding. On August 27, 2002, TURN sent a letter to the assigned ALJ stating that those modifications adequately addressed its issues in this proceeding and indicated its intention to withdraw its protest to the revised applications. On August 29, 2002, TURN filed a motion to withdraw its protest to the applications.

On April 1, 2003, the utilities filed amendments to A.02-03-061 and A.02-03-062. The utilities broadened the classification of pipe that would be available for the new service, revised their proposed recurring annual charges to reflect changed conditions, and reflected the revisions that were incorporated in the revised testimony and proposed tariff sheets that were served on the ALJ and parties on August 23, 2002. There were no responses to the April 1, 2003 filing.

The utilities' requests were also subjected to environmental review. The Final Environmental Impact Report (FEIR) was released on September 6, 2003. On October 2, 2003, the Commission approved D.03-10-017, which certified and considered the FEIR and granted the amended requests for authorization to provide the fiber optic cable in gas pipeline service.

## **2. Requirements for Awards of Compensation**

Intervenors who seek compensation for their contributions in Commission proceedings must file requests for compensation pursuant to Pub. Util. Code §§ 1801-1812.<sup>1</sup> Section 1804(a) requires an intervenor to file a Notice of Intent

---

<sup>1</sup> All statutory citations are to the Public Utilities Code.

(NOI) to claim compensation within prescribed time periods. The NOI must present information regarding the nature and extent of the customer's planned participation and an itemized estimate of the compensation the customer expects to request.<sup>2</sup> It may also request a finding of eligibility.

Other code sections address requests for compensation filed after a Commission decision is issued. Under § 1804(c), an intervenor requesting compensation must provide "a detailed description of services and expenditures and a description of the customer's substantial contribution to the hearing or proceeding." Section 1802(h) states that "substantial contribution" means that,

"in the judgment of the commission, the customer's presentation has substantially assisted the commission in the making of its order or decision because the order or decision has adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer. Where the customer's participation has resulted in a substantial contribution, even if the decision adopts that customer's contention or recommendations only in part, the commission may award the customer compensation for all reasonable advocate's fees, reasonable expert fees, and other reasonable costs incurred by the customer in preparing or presenting that contention or recommendation."

Section 1804(e) requires the Commission to issue a decision that determines whether the customer has made a substantial contribution and what amount of compensation to award. The level of compensation must take into account the market rate paid to people with comparable training and experience who offer similar services, consistent with § 1806.

---

<sup>2</sup> To be eligible for compensation, an intervenor must be a "customer," as defined by § 1802(b). In today's decision, "customer" and "intervenor" are used interchangeably.

**3. NOI**

Section 1804.1(a)(1) states, in part, that a customer who intends to seek an award shall, within 30 days after the PHC is held, file an NOI to claim compensation. The PHC was held on July 13, 2002. On August 9, 2002, TURN timely filed its NOI and requested a finding that it is a customer as defined in § 1802(b), a finding of significant financial hardship, and a ruling that it is eligible for compensation. There were no challenges to TURN's requests.

We find that TURN satisfies the customer<sup>3</sup> and financial hardship<sup>4</sup> requirements and that it is eligible for compensation in this proceeding.

**4. Timeliness of Award Request**

Section 1804(c) requires an eligible customer to file a request for an award within 60 days of issuance of a final order or decision by the Commission in the proceeding. The Commission approved D.03-10-017 at its scheduled public meeting on October 2, 2003 and mailed it to parties of record on October 3, 2003. The 60<sup>th</sup> day after the October 3 mailing was December 2, 2003. TURN's request for compensation was timely filed on that day.

---

<sup>3</sup> As defined by § 1802(b), TURN is a "group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential ratepayers." TURN provided the relevant portions of its articles of incorporation in the NOI submitted in A.98-02-017, and again in A.99-12-024, and states that its articles of incorporation have not changed since the time of those earlier submissions.

<sup>4</sup> In part, Section 1804(b)(1) states, "A finding of significant financial hardship shall create a rebuttable presumption of eligibility for compensation in other commission proceedings commencing within one year of the date of that finding." TURN received a finding of significant financial hardship in a December 19, 2001 ruling in A.01-09-003. This proceeding commenced in March 2002, within one year of the date of that finding, so the rebuttable presumption applies in this case.

## **5. Substantial Contribution to Resolution of Issues**

Pursuant to Pub. Util. Code § 1802(h), a party may make a substantial contribution to a decision in one of several ways. It may offer a factual or legal contention upon which the Commission relied in making a decision, or it may advance a specific policy or procedural recommendation that the ALJ or Commission adopted. A substantial contribution includes evidence or argument that supports part of the decision even if the Commission does not adopt a party's position in total.

In this proceeding, TURN filed an initial protest addressing concerns regarding the impact on system capacity, use of adequate planning criteria to anticipate system constraints, fair sharing of future revenues, and the potential of affiliate abuse. TURN engaged in settlement discussions with the utilities and the utilities filed amended applications, which addressed TURN's concerns. According to TURN, the applications were modified by:

- Requiring a longer planning horizon to determine which pipelines have sufficient space to accommodate fiber optic installation;
- Limiting the pipeline mileage eligible for installation during the first three years of service;
- Requiring the utilities to include a forecast of revenues in their next cost of service proceedings; and
- Requiring annual reports with sufficient detail to evaluate any potential impacts on service reliability or maintenance costs.

A review of the record in this proceeding confirms TURN's contention that its efforts yielded a substantial contribution to D.03-10-017.

## **6. Overall Benefits of Participation**

In D.98-04-059, the Commission adopted a requirement that a customer demonstrate that its participation was "productive," as that term is used in § 1801.3, where the Legislature provided guidance on program administration. (*See* 79 CPUC 2d, at 649-650, and Finding of Fact 42.) D.98-04-059 explained that participation must be productive in the sense that the costs of participation should bear a reasonable relationship to the benefits realized through such participation. D.98-04-059 directed customers to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. This exercise assists us in determining the reasonableness of the request and in avoiding unproductive participation.

TURN asserts that the major benefit of the modifications it promoted is to ensure that increased maintenance costs are adequately tracked in the future to prevent unfair subsidy by ratepayers. Additionally, the modifications directly resulted in the inclusion of \$65,000 as other operating revenues in the utilities' pending cost of service proceedings, A.02-12-027 and A.02-12-028. In considering TURN's requested award of \$7,754.21, we find that its participation was productive. Additionally, since TURN was the only active party that requested modifications to the original applications, its participation was not duplicative.

**7. Reasonableness of Requested Compensation**

TURN requests \$7,754.21 as follows:

	Year	Rate	Hours	Total
<u>Attorney Fees</u>				
M. Hawiger - Professional	2002	\$200.00	20.25	\$ 4,050.00
M. Hawiger - Compensation	2002	\$100.00	0.50	\$ 50.00
M. Hawiger - Professional	2003	\$200.00	0.90	\$ 180.00
M. Hawiger - Compensation	2003	\$100.00	7.00	\$ 700.00
M. Florio - Professional	2002	\$385.00	3.50	<u>\$ 1,347.50</u>
<b>Total Attorney Fees</b>				<b>\$ 6,327.50</b>
<u>Consultant Fees</u>				
JBS Energy, Inc.				
G. Schilberg	2002/2003	\$130.00	7.96	\$ 1,034.80
J. Helmich	2003	\$150.00	0.50	<u>\$ 75.00</u>
<b>Total Consultant Fees</b>				<b>\$ 1,109.80</b>
<u>Other Costs</u>				
Photocopying costs				\$ 112.40
Postage costs				\$ 10.71
Lexis charges				\$ 190.70
Phone costs				<u>\$ 3.10</u>
<b>Total Other Costs</b>				<b>\$ 316.91</b>
<b>TOTAL REQUEST</b>				<b><u>\$ 7,754.21</u></b>

**7.1 Hours Claimed**

TURN has documented its claimed hours through detailed records of the time spent by its attorneys and consultants in this proceeding. The records indicate both the professional hours and the activities associated with the hours. We have reviewed the detailed billing information and conclude that the hourly breakdowns reasonably support its claimed hours.

**7.2 Hourly Rates**

Section 1806 requires the Commission to compensate eligible parties at a rate that reflects the “market rate paid to persons of comparable training and



experience who offer similar services.” For its attorneys, TURN has requested 2002 hourly rates of \$200 for Hawiger and \$385 for Florio. Both rates were previously adopted in D.02-09-040. TURN also used Hawiger’s 2002 hourly rate for the limited number of hours expended by him in 2003. We find these rates to be reasonable for use in this proceeding.

For consultant services provided by JBS Energy, Inc. (JBS), TURN has included costs that reflect a 2002/2003 hourly rate of \$130 for Schilberg and a 2003 hourly rate of \$150 for Helmich. A 2001/2002 hourly rate of \$130 was previously adopted for Schilberg, in D.02-11-017. It is reasonable to use the same rate for 2002/2003. Helmich is a registered civil engineer with 25 years of experience in energy economics, analysis and engineering. He received a B.S. degree in Engineering from California State University, Sacramento, in 1973 and an M.S. degree in Civil Engineering from the University of California, Berkeley, in 1974. He spent 8 years on the staff of the California Energy Commission, and provided engineering and economics expertise to a wide range of project, including many that required the preparation of testimony and the appearance as a witness. In 1984, he became President and Principal Engineer of JBS. His responsibilities include engineering, energy project economic evaluations and project management activities as well as corporate management and administration. Helmich’s education and experience are comparable to that of other engineers that have adopted hourly rates of \$190<sup>5</sup>. The use of a 2003 hourly rate of \$150 for Helmich is reasonable.

---

<sup>5</sup> In D.03-10-056, we adopted a 2001 hourly rate of \$190 for W. Schmus and A. Smeedyk. Both are registered engineers with B.S. degrees in Electrical Engineering, and both have energy related experience comparable to Helmich.

### **7.3 Other Costs**

TURN's request includes \$316.91 for miscellaneous expenses associated with its efforts in this proceeding. TURN has provided documentation of the costs, which relate to photocopying, postage, research, and telephone usage, and we find them to be reasonable.

### **8. Award to TURN**

We award TURN \$7,754.21 for substantial contributions to D.03-10-017. Consistent with previous Commission decisions, we will order that interest be paid on the award amount (calculated at the three-month commercial paper rate), commencing the 75th day after TURN filed its compensation request. Interest will continue until the full payment is made.

As in all intervenor compensation decisions, we put TURN on notice that the Commission staff may audit records related to this award. Adequate accounting and other documentation to support all claims for intervenor compensation must be made and retained. The records should identify specific issues for which TURN requests compensation, the actual time spent, the applicable hourly rate, and any other costs for which compensation is claimed.

### **9. Waiver of Comment Period**

This is a compensation matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(3), the otherwise applicable 30-day review and comment period is being waived.

### **10. Assignment of Proceeding**

Michael R. Peevey is the Assigned Commissioner and David K. Fukutome is the assigned ALJ for these proceedings.

**Findings of Fact**

1. TURN is a customer as defined in § 1802(b).
2. TURN has satisfied the significant financial hardship requirements of § 1804(b)(1).
3. TURN is eligible for intervenor compensation in this proceeding.
4. TURN has made a timely request for compensation for its contributions to D.03-10-017.
5. TURN contributed substantially to D.03-10-017.
6. The participation of TURN was productive and avoided duplication with other parties.
7. The hourly rates for Hawiger, Florio and Schilberg have been adopted in previous Commission decisions and are reasonable for use in this proceeding.
8. A 2003 hourly rate of \$150/hour for Helmich is reasonable based on awards to other consultants with comparable experience.
9. The hours claimed for work performed by Hawiger, Florio, Schilberg and Helmich are itemized and reasonable.
10. The miscellaneous costs incurred by TURN in the amount of \$316.91 are reasonable.

**Conclusions of Law**

1. TURN has fulfilled the requirements of §§ 1801-1812, which govern awards of intervenor compensation.
2. TURN should be awarded \$7,754.21 for contributions to D.03-10-017.
3. Per Rule 77.7(f)(6) of the Commission's Rules of Practice and Procedure, the comment period for this compensation decision may be waived.
4. This order should be effective today so that TURN may be compensated without unnecessary delay.

**O R D E R**

**IT IS ORDERED** that:

1. The Utility Reform Network (TURN) is awarded \$7,754.21 in compensation for its substantial contribution to Decision 03-10-017.
2. Southern California Gas Company (SoCalGas) and San Diego Gas & Electric Company (SDG&E) shall be responsible for making payment of the award to TURN as follows: SoCalGas 85%; SDG&E 15%. Payment shall be made within 30 days of the effective date of this order. SoCalGas and SDG&E shall also pay interest on the award at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15, beginning with the 75<sup>th</sup> day after December 2, 2003, the date the request was filed.
3. The comment period for today's decision is waived.
4. This proceeding is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.

**Compensation Decision Summary Information**

<b>Compensation Decision(s):</b>	D
<b>Contribution Decision(s):</b>	D0310017
<b>Proceeding(s):</b>	A0203061; A0203062
<b>Author:</b>	ALJ Fukutome
<b>Payer(s):</b>	Southern California Gas Company and San Diego Gas & Electric Company

**Intervenor Information**

<b>Intervenor</b>	<b>Claim Date</b>	<b>Amount Requested</b>	<b>Amount Awarded</b>	<b>Reason Change/ Disallowance</b>
The Utility Reform Network	12/02/03	\$7,754.21	\$7,754.21	-

**Advocate Information**

<b>First Name</b>	<b>Last Name</b>	<b>Type</b>	<b>Intervenor</b>	<b>Hourly Fee Requested</b>	<b>Year Hourly Fee Requested</b>	<b>Hourly Fee Adopted</b>
Marcel	Hawiger	Attorney	The Utility Reform Network	\$200 \$200	2002 2003	\$200 \$200
Michel	Florio	Attorney	The Utility Reform Network	\$385	2002	\$385
Gayatri	Schilberg	Economist	The Utility Reform Network	\$130	2002/2003	\$130
James	Helmich	Engineer	The Utility Reform Network	\$150	2003	\$150